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UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL
B-190808.3

October 19, 1981

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The Honorable Daniel Patrick Moynihan
United States Senate

Dear Senator Moynihan:

This is in regard to your letter of September 1, 1981, enclosing a letter from Mr. S. G. Coron, vice president of Balfour, Maclaine International Ltd.

Mr. Coron's letter expresses concern that the General Accounting Office has not investigated an alleged misuse of Federal funds under a grant from the Department of Commerce, Economic Development Administration to the Commerce Development Administration, an entity of the Government of Puerto Rico, for a project known as the San Juan Central Market Expansion.

In late 1977 Bally Case & Cooler, Inc. (Bally), apparently a subsidiary of Balfour, Maclaine International Ltd., filed a protest with our Office, alleging that a second-tier subcontractor on the Central Market project would not be capable of providing insulated panels that met the contract specifications. In our decision in Bally Case & Cooler, Inc., B-190808, January 16, 1978, 78-1 CPD 34 (copy enclosed), we dismissed Bally's protest because the facts of the case did not fall within one of the sets of circumstances in which we will review protests of the award of subcontracts. Generally, we do not review such protests because prime contractors are normally independent contractors whose methods of subcontracting are not subject to the statutory and regulatory requirements governing direct procurements of the Federal Government.

In July of this year, Bally informed us that the warehouse which incorporated the insulated panels had burned down. Bally alleged that the fire was the result of defective insulated panels

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and requested our comments. In a letter of July 21, copy enclosed, we referred Bally to our 1978 decision and pointed out that the issues of the causation of the fire and the liability for damages were matters to be resolved by the proper authorities and the parties involved.

Bally's August 12, 1981, letter to you again expresses the view that our Office should review the situation to determine whether Federal funds were properly expended. For the reasons stated in our 1978 decision, we continue to hold the view that it is inappropriate for us to entertain a bid protest of the award of a subcontract in cases like this one. Of course, under our audit authority we review a broad spectrum of Federal activities. However, this review is carried out with limited resources and, consequently, we must make critical decisions concerning the efficacy of each review in terms of obtaining the greatest benefit for the resources expended. We do not believe that the information furnished by Bally warrants our audit review in light of the possible benefits vis-a-vis utilization of personnel on other investigations.

We trust that this information is sufficient to permit you to answer Bally's inquiry. As you requested, we are returning the letter from Mr. Coron.

Sincerely yours,

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel

Enclosures - 3